

DEPARTMENTAL POLICIES

POLICY # 109	SUBJECT: Criminal History Checks
EFFECTIVE DATE: October 1, 1992	PAGE 1 of 7
REVISION DATE: July 25, 2008	
AUTHORIZED SIGNATURE:	

I. BACKGROUND

This policy has been developed to meet the requirements of Title 31, Chapter 3, Section 309 of the Delaware Code.

The main purpose of this policy is the protection of children/youth that are in the care or custody of the Department. To this end, persons who are employees and volunteers of the Department's contractors, as well as foster, respite and adoptive parents, will have their criminal history checked prior to employment/placement and/or during a conditional period of employment/placement.

PLEASE NOTE: For purposes of this document the definition of foster parent means foster/respite/adoptive parents and all household members 18 years of age and older.

It is the position of the Department that child/youth care persons (see the Definitions section of this policy) of the Department's licensed contractors, as well as foster and adoptive parents, be free from any prior criminal activity or involvement in substantiated cases of abuse/neglect that may lead to the harm of any child/youth.

It is the Department's professional, ethical and legal obligation to our children/youth that led to the development of this policy to investigate the criminal history of child/youth care persons and foster parents of the Department and of our contractors.

II. DEFINITIONS

- A.** Child/Youth Care Person means any person employed in a residential child care facility and/or employed by one of the Department's Contractors in a position which involves supervisory or disciplinary authority over a child/youth or in a position which provides the opportunity to have direct access to/contact with (see F. below) a child/youth without the presence of other employees or adults. This definition includes foster parents and volunteers. (See definitions H and J)
- B.** Conditional Child/Youth Care Person means a child/youth care person who has been offered a position or has agreed to volunteer with a Department Contractor or in a residential child care facility. Under the provisions of the law, a child/youth care person may be hired on a

temporary basis until the determination of suitability is made by the Department. If an individual has a prohibited conviction or a discretionary unsuitable determination is made by the Division Director, the child/youth care person shall be dismissed. Foster parents may be provisionally approved prior to the results of the criminal history check and in accordance with the Division of Family Services policy.

- C. Criminal History Specialist means the Department staff member, located in the Office of Child Care Licensing, who is responsible for processing and reviewing criminal history information consistent with Department policies, procedures and regulations.
- D. Criminal History Supervisor means the Department staff member, located in the Office of Child Care Licensing, who is responsible for the implementation of the criminal history policies, procedures and regulations.
- E. Department means the Department of Services for Children, Youth and Their Families.
- F. Direct Access means the opportunity to approach children/youth without the presence of other adults in the course of one's assigned duties and responsibilities.
- G. Employer means any of the following:
 - 1. The Divisions within the Department (PLEASE NOTE: The Divisions within the Department do not "employ" foster parents or volunteers, but for purposes of this document, the Divisions are referred to as employer.)
 - 2. Any Delaware contractor who operates a program that provides regular direct access to children/youth.
 - 3. Any Delaware contractor who provides foster care, respite care and/or adoption services.
- H. Foster Parents means foster/respite/adoptive parents and all household members 18 years of age or older.
- I. Residential Child Care Facility means any facility in Delaware that provides out-of-home, 24 hour care, protection and supervision for children who have either: behavioral dysfunctions; developmental, emotional, mental or physical impairments; or chemical dependencies. For purposes of this policy, a Residential Child Care Facility is defined as one that is **both** licensed by and contracts with the Department to provide services.
- J. Volunteer means any person who has direct access to children/youth in the performance of unpaid duties and will be in a facility or in the service of the Department for 5 or more days in a fiscal year. Student interns, regularly scheduled volunteers, and volunteer counselors will

POLICY #: 109	SUBJECT: Criminal History Checks	Page 3 of 7
----------------------	---	--------------------

be required to have a criminal history check under this law. (For limited, occasional, volunteer efforts that last less than 5 days or 40 hours, employers must ensure that these volunteers will be supervised during any activities with children.)

III. POLICY

A. Department Responsibilities

The Department has the responsibility to promulgate regulations according to Title 31, Chapter 3, Section 309 of the Delaware Code. The Department is responsible for conducting a search of Department records for substantiated cases of child abuse/neglect and will be responsible for the receipt, evaluation and dissemination of information resulting from the criminal history and Department record checks for all identified contractor child/youth care persons, and foster parents. The Department assures the confidentiality and security of the information gathered.

B. Employer Responsibilities

Each employer (as defined in G.) will be responsible for having child/youth care persons and foster parents complete the Criminal History Record Request form, the fingerprint process and for sending the YELLOW COPY of the Criminal History Record Request form to the Criminal History Specialist.

This process needs to be completed either as soon as the employer knows that this person has accepted the position or agreed to serve as a volunteer, or no later than the fifth working day. For foster parents, this is to be done prior to completion of pre-service training or the home study process.

All child/youth care persons and foster parents shall be required to notify the employer of any subsequent arrests/charges as a condition of continued employment/approval.

C. Conditional Status

The employer may have the child/youth care person begin work prior to receiving the results of the history check. The Department will consider this as conditional employment and the child/youth care person should be notified to this effect by the employer at the time of hire. Foster parents may be provisionally approved prior to receiving the results of the criminal history check and in accordance with the Division of Family Services policy. An interim

report may be issued under special circumstances and at the discretion of the Criminal History Specialist.

D. Notification of Results

When the information is received by the Department from the State Bureau of Identification, the Federal Bureau of Investigation and other applicable sources, the information will be reviewed, a decision made, and results forwarded to the child/youth care person and the employer or, in the case of Department foster parents, to the County Regional Administrator.

E. Administrative Review

In any case where the child/youth care person believes the criminal history information is incorrect or incomplete, they have the opportunity to request a review of the facts of the criminal history check within 5 working days of the receipt of the employment/approval decision. If the child/youth care person believes that additional information regarding the circumstances would clarify the situation, she/he has the opportunity to request a review of the decision within 10 working days of the receipt of the employment approval decision.

F. Subsequent Arrests

When information is received by the Department from the State Bureau of Identification that a child/youth care person or foster parent has a criminal charge subsequent to an initial criminal history check, the Criminal History Unit will notify the employer or County Foster Home Coordinator as appropriate. The notification will include specifics of the charge(s).

IV. PROCEDURES

- A.** The employer shall require each individual subject to the law, to complete a Criminal History Record Request form and be fingerprinted, either as soon as the individual has accepted a position or agreed to serve as a volunteer, or no later than the fifth working day. In the case of foster parents, this process is to be completed prior to completion of pre-service training or the home study process.
- B.** The employer or in the case of Department approved foster parents, the Division of Family Services sends the **YELLOW** copy of the Criminal History Record Request form to the Department Criminal History Specialist and files the **PINK** copy in the child/youthcare person's personnel file or the foster parent's case record.
- C.** The child/youth care person or foster parent takes the **WHITE** copy of the form to a designated Delaware State Police location and has **two** sets of fingerprints taken. The **WHITE** copy is attached by the Fingerprint Technician to the fingerprint cards.
- D.** The Delaware State Police follow established State Bureau of Identification procedures used to obtain criminal history background information from the State Bureau of Identification

and Federal Bureau of Investigation. The results of the State Bureau of Identification and Federal Bureau of Investigation criminal history checks are sent to the Criminal History Specialist once completed.

E. Simultaneously, the Criminal History Specialist conducts a review of Department records to determine if the child/youth care person is named as a perpetrator in a substantiated case of child abuse or neglect. Results of the review are maintained in the child/youth care persons criminal history check file.

F. When the Criminal History Specialist receives the information from the State Bureau of Identification, Federal Bureau of Investigation and she/he reviews that information, along with the Criminal History Record Request form in order to prepare a report of the findings for the designated Division Director. If there is need for clarification on some of the information, the Criminal History Specialist will contact the child/youth care person. In some instances, clarification may also be obtained from the court system, appropriate criminal justice personnel (arresting officer, attorney general, etc.) or Division of Family Services personnel (investigating worker). This review is guided by the criteria specified in Regulations 26-29.

G. Notification of results of the criminal history check:

- 1.** When there is no record, the Criminal History Specialist reports this information to the designated Division Director. The Division Director sends notification to the employee and copies the Criminal History Specialist and the employer. In the case of foster parents, the notification is sent to the foster parent with copies to the County Foster Home Coordinator/Child Placing Agency and the Criminal History Specialist.
- 2.** When there is a criminal history, the Criminal History Specialist prepares a summary of the findings and a recommendation regarding suitability for the designated Division Director. The Division Director then makes a decision, guided by regulations 26-29, and sends notification to the employee with a copy of the findings and copies the employer and the Criminal History Specialist. In the case of foster parents, the notification is sent to the foster parent with copies to the County Foster Home Coordinator/Child Placing Agency and the Criminal History Specialist.

H. Administrative review

- 1.** In the event that a child/youth care person feels that the criminal history information is incorrect or incomplete, she/he must file a written or reduced to writing request with the Criminal History Specialist (with a copy to the employer) for a review of the facts of the criminal history within 5 working days of the receipt of the decision denying, recommending termination, or terminating employment, volunteering or

foster parenting. The child/youth care person should make application for correct information to the State Police (for criminal record) or Division of Family Services for child abuse/neglect information. When the corrected information is obtained by the child/youth care person it will be reviewed by the Criminal History Specialist's Supervisor and the Criminal History Specialist. The Criminal History Specialist will issue a recommendation based on the corrected information to the appropriate Division Director. The Division Director makes a final decision and notifies the child care person or foster parent and copies the employer or Child Placing Agency and the Criminal History Specialist.

2. If the child/youth care person believes that additional information regarding the circumstances of the particular offenses would clarify the situation, she/he must file a written request for an administrative review and the written documentation to be considered in the review to the appropriate Division Director with copies to the employer and the Criminal History Specialist. This is to be submitted within 10 working days from the date of the receipt of the decision denying/recommending termination/terminating employment, volunteering or foster parenting. The individual may also request to give an oral presentation at her/his review.
 3. When a child/youth care person requests a review of the facts of the criminal history or an administrative review, the employer notifies the Criminal History Specialist of the action to remove the child/youth care person from direct access to children/youth or provisions made for on-site supervision of the person during working hours pending the results of the review (s). (This is in addition to following established procedures already governing residential child care facilities.) In the case of foster parents, children may be removed from the home or no further placements shall be made pending the results of the review.
 - a. In the case of a review of a decision involving a Department approved foster parent, the Division of Family Services Director (or designee) shall conduct the review with the Criminal History Specialist present as a witness. The County Foster Home Coordinator and Supervisor shall be present.
 - b. In the case of a review of a decision involving an employee or foster parent in a contracted facility, the Division Director (or designee) of the contracting Division shall conduct the review with the Criminal History Specialist present as a witness. The employer may also be present.
- I. The child/youth care person will be notified of the results of the Administrative Review within 15 working days from the date of the review.
1. If the review indicates the child/youth care person has not provided evidence to warrant disregard of the criminal history record, the denial or termination of employment,

volunteering or foster parenting is upheld and the child/youth care person and employer are so notified in writing by the Division Director (or designee.)

2. If the review indicates the child/youth care person has provided evidence to warrant disregard of the criminal history record, the denial or termination is overturned and the child/youth care person and employer are so notified in writing by the Division Director (or designee).

J. Foster Parents Located Out-of-State: The following procedures initiate the process for Criminal History checks for foster parents located out-of-state. Once these initial four steps are completed, the procedures outlined in this section B through I above shall be followed to finish the background check process.

1. The Criminal History Specialist sends a Criminal History Record Request form along with Applicant fingerprint cards to the foster parent.
2. The foster parent takes the fingerprint cards to a local police station or a State Police barrack and has two sets of fingerprints taken.
3. The fingerprint cards and the completed Criminal History Record Request form are then to be sent directly to the Criminal History Specialist by the foster parent.
4. The Criminal History Specialist will maintain the Yellow copy of the Criminal History Record Request form, and send the white copy with fingerprint cards attached to the State Bureau of Identification for the criminal history check to be completed.

K. The Criminal History Specialist ensures confidentiality of all criminal history check files and the Administrative Review process.